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May 22 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Andre Brooks,

Appellant,

vs.

South Carolina Labor, Licensing and
Regulation, South Carolina Board of
Registration for Professional Engineers and
Surveyors,

Respondent.

Docket No. 22-ALJ-11-0313-AP

**ORDER DENYING APPELLANT'S
MOTION TO EXTEND THE TIME TO
FILE HIS MOTION FOR REHEARING**

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) for an administrative appeal filed by Andre Brooks (Appellant) pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2022). In this appeal, Appellant challenges the final administrative order of the South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Registration for Professional Engineers and Surveyors (the Board) in which the Board denied Appellant's application for licensure by comity as a professional engineer in South Carolina. This matter was assigned to the undersigned on September 1, 2022. The Board filed the record on appeal on October 11, 2022. On November 10, 2022, Appellant filed his brief. On December 6, 2022, the Board moved for an extension to file its brief, which the Court granted on December 9, 2022. Thus, the Board filed its brief on January 13, 2023, and Appellant filed his reply brief on January 23, 2023.

The Court filed and served its final order on February 6, 2023. On Thursday, February 16, 2023, at 5:00 P.M., Appellant emailed the Court and the Board. In the email, Appellant stated the following: "Attached is the motion for an extension in the above captioned matter. [Counsel for the Board] is copied on the email and a hard copy will be mailed to both parties." The attached motion stated Appellant was seeking "an extension to file a Motion of Reconsideration, with the Motion of Reconsideration being due no later than March 20, 2023." *See generally* SCALC Rule 40 (providing for motions for rehearing in appeals). Appellant cited SCALC Rules 3(C) and 37(A). Appellant's certificate of service for the motion reflected that Appellant "served" the



motion by placing the motion in the mail to the Court's mailing address; the certificate of service listed the Board as being served, but no address was listed. Additionally, in Appellant's cover letter to the motion, Appellant stated the following: "Please find enclosed the original and one copy of Appellant's Motion to Extend Time to File a Motion of Reconsideration for the Court in the above-captioned matter. The Respondent will be mailed a copy of Appellant's Motion today."

At 5:11 P.M. on February 16, 2023, the Court confirmed receipt of Appellant's email and electronic attachment. On Tuesday, February 21, 2023, counsel for the Board stated the following: "I've received Appellant's attached motion. Respondent does not intend to file an objection or formal response to the motion."

As of February 27, 2023, the Court had not received Appellant's motion to enlarge the time to file his motion for rehearing. Accordingly, on February 27, 2023, the Court issued a status order about Appellant's motion. The status order stated the following: (1) Appellant shall file an affidavit with the Court, serve the same upon the Board, and email a copy to both by March 9, 2023, at 12:00 P.M. to explain if Appellant did in fact place the motion for an extension in the U.S. mail to the Court and the Board on February 16, 2023; (2) if Appellant did not comply with the prior conditions, the Court would deem this as a waiver; and (3) if Appellant in fact filed and served the motion for an extension on February 16, 2023, then Appellant needed to resend the motion and filing fee to the Court on or by March 9, 2023, at 12:00 P.M.

On March 8, 2023, Appellant filed, served, and emailed a copy of the documents that were outlined in the Court's February 27, 2023 order.¹ Specifically, Appellant explained that he did in fact place his motion in the U.S. mail on February 16, 2023, and he was uncertain of the status of his prior motion in the U.S. mail. He also provided the filing fee and copy of the prior motion. The Court therefore concluded that Appellant timely filed a motion for an extension of time in which to file a motion for rehearing. Accordingly, on March 14, 2023, the Court granted Appellant's motion and provided the following: "Appellant shall have until **March 20, 2023**, to file his motion for rehearing with the Court, serve the Board with his motion for rehearing; and e-mail the same to both the Court and the Board at the time of filing and serving the motion."

On March 21, 2023, Appellant emailed the Court and the Board a copy of his motion for rehearing and a filing in support of the motion. In the email, Appellant stated the motion and filing

¹ The Court notes that Appellant included the Board's mailing address with the certificate of service dated February 16, 2023.

in support were being mailed to the Court and the Board on March 21, 2023. Additionally, Appellant's motion and certificate of service were dated March 21, 2023. Appellant raised several arguments related to the Board's brief and the Court's order dated February 6, 2023. Specifically, Appellant requested the following relief: "[that he be] granted a license or a rehearing of the within matter or a setting aside of this [ALC] order Feb 6, 2023 and a remand to the Board to develop a more complete record or order the Board to grant Appellant a license." On March 30, 2023, the Court denied Appellant's motion because the motion was untimely. Accordingly, the Court declined to rule on the other grounds raised in Appellant's motion.

On April 11, 2023, Appellant filed a "motion to extend time for late filing of motion of reconsideration." In the motion, Appellant stated the following:

Due to continued health issues of . . . Appellant, as well as continued unexpectedly high volume of work, meetings[,] and seeking to retain counsel to file the Motion of Reconsideration. Appellant attempted to retain counsel but was unable to get an attorney to represent . . . Appellant on this matter. Appellant respectfully requests the Court to grant an extension for late filing of the motion of Reconsideration, with the extended filing date of the Motion of Reconsideration being due no later than March 22, 2023[,] to allow for on time filing of the Motion to Reconsider. Due to the continued health issues of . . . Appellant and other issues referenced above beyond my control, Appellant respectfully request that this court grant . . . Appellant's Motion for Late Filing request.

As of the date of this order, the Court has not received a response from the Board on Appellant's present motion.

DISCUSSION

Appellant requests that the Court issue an order again extending the time for him to file his motion for rehearing. The Court denies Appellant's request.

SCALC Rule 40 provides that a motion for rehearing "must be filed within ten days of receipt of the order." Moreover, SCALC Rule 38 permits the Court to deny a motion for rehearing if the party seeking the rehearing fails to comply with the Court's order setting the deadline for such motion to be filed and served. *See id.* ("Upon motion of any party, or on its own motion, an administrative law judge may dismiss an appeal or *resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to*

comply with any of the time limits provided in these rules or by order of the Court." (emphasis added)).

Pursuant to SCALC Rule 3(B), the Court granted Appellant's initial requested relief to have his motion for rehearing "due no later than March 20, 2023." *See id.* ("For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law."). Specifically, in the Court's March 14, 2023 order, the Court ordered the following: "Appellant shall have until **March 20, 2023**, to file his motion for rehearing with the Court, serve the Board with his motion for rehearing; and e-mail the same to both the Court and the Board at the time of filing and serving the motion."

Appellant emailed, filed, and served his motion for rehearing on March 21, 2023—after the deadline that he requested in his motion for an extension and the date that the Court ordered on March 14, 2023. Accordingly, the Court determined Appellant's motion for rehearing was untimely, and the Court denied Appellant's motion for rehearing based on the untimeliness of said motion.

Presently, Appellant is yet again seeking an extension of time. The Court was receptive of Appellant's first request for an extension of time to file and serve his motion for rehearing, which was why the Court granted Appellant the deadline he sought. The deadline Appellant requested passed without any motions from Appellant seeking to extend the time again. Had Appellant sought an additional extension prior to the expiration of the initial extension, the Court might have been inclined to grant that request, but Appellant made no such motion. Moreover, Appellant's motion for an extension relies upon the same generic considerations which supported the first motion and make no mention of any changed or new circumstance requiring even more time. As of today's date, almost three months have elapsed since the Court issued the final order on February 6, 2023. At some point, finality is required.

The Court is aware the consequences of its decision may appear harsh, and the Court is cognizant about Appellant's statements about seeking counsel. However, while Appellant is pro se, he is still obligated to follow the substantive and procedural requirements of the law. *See State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct. App. 2013) ("A pro se litigant who knowingly elects to represent himself [or herself] assumes full responsibility for complying with substantive and procedural requirements of the law." (quoting *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003))); *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 403, 368

S.E.2d 687, 689 (Ct. App. 1988) ("Lack of familiarity with legal proceedings is unacceptable[,] and the court will not hold a layman to any lesser standard than is applied to an attorney."). Accordingly, the Court concludes Appellant's motion should be denied.

ORDER

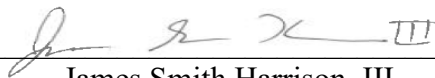
IT IS THEREFORE ORDERED that Appellant's motion is **DENIED**.
AND IT IS SO ORDERED.

Robert L. Reibold
Administrative Law Judge

April 28, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, hereby certify that I have this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

A handwritten signature in black ink, appearing to read "James Smith Harrison, III", is written above a horizontal line.

James Smith Harrison, III
Judicial Law Clerk

April 28, 2023
Columbia, South Carolina